while Equity III, given by him last year, will be taught by Mr. Dutch. The course on Pleading will be given by Mr. Warren Abner Seavey, A.B., LL.B., 1904, newly appointed Lecturer on Pleading, and the course on Massachusetts Practice by Mr. John Gorham Palfrey, A.B., LL.B., 1899, a former editor of this Review, who has been appointed Lecturer on Massachusetts Practice.

There has been a considerable increase in the requirements of the Law School. The required number of hours a week for first year men has been raised from twelve to thirteen, the courses in Criminal Law and in Pleading having each been made full courses of two hours a week throughout the year. Twelve hours a week, instead of ten, is now the requirement in the second year. In addition, it is required that the general average grade of second year students be five per cent higher than the passing mark in the individual courses.

THE AMES COMPETITION. — The year marks the establishment, out of the fund given by Mrs. James Barr Ames, at the request of her husband, of two prizes of $200 and $100, to be given to the winners of a competition between the law clubs in the argument of moot cases. The competition will be in the form of an elimination tournament, and will be open to all second-year clubs of eight members which meet certain requirements. In the competitions in any given round, each club will be represented by two counsel. No representative of any club may argue more than once until at least six men of that club have argued; but after six men have argued no further restriction is imposed.

THE BOARD OF STUDENT ADVISERS. — The scope of the work of the Board of Student Advisers, appointed by the Faculty, has been somewhat extended. The Board is to have supervision of the Ames Competition, and, in addition, each adviser will be assigned a certain number of the law clubs over the work of which he will have general supervision; he will also sit on several of the cases argued in these clubs. The members of the Board will be in the reading room of Langdell Hall during certain hours of the day to assist all members of the Law School in the intelligent use of the law library. The members of the Board for the coming year are James B. Grant, Jr., Chairman, Lawrence G. Bennett, John G. Buchanan, William M. Evarts, Charles V. Graham, Max Lowenthal, Stuart C. Rand, and J. Robert Szold.

THE STANDARD OIL AND TOBACCO CASES AND PRIOR DECISIONS OF THE SUPREME COURT UNDER THE SHERMAN ACT. — Seven years ago, only a five to four majority of the judges of the Supreme Court prevented a holding that the Sherman Anti-Trust Act is powerless to deal with restraint of trade in the form of a corporation.[1] The two

[1] See Northern Securities Co. *v.* United States, 193 U. S. 197.

great recent cases under the Act dispel all former doubts on that subject. In dissolving the Standard Oil Company and the American Tobacco Company, the court held that restraint of trade as a condition is illegal, irrespective of the form which it assumes, or the nature of the transactions which produce it. *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.*, 221 U. S. 106.

But these decisions also mark an epoch in anti-trust law in construing the words "restraint of trade" in the Act in their common-law significance, and so as embracing only "undue" restraints. The court for the first time lays down an intelligible test of illegality. In so doing the court departs in no wise from its prior decisions, and makes no change in the law. It is true that it was often stated, as a result of generalization from some of the language used in certain cases,[2] that the Supreme Court had construed the Act to embrace every restriction of competition, whether or not reasonable, and whether or not affecting the right of strangers to the transaction to compete. But this statement of the law was justified by no decision of the court and was by no means universally accepted.[3] The propositions of law bearing on this question which are embodied in the decisions of the court prior to the principal cases are comparatively few. One class of cases held combinations between railroads to fix rates illegal.[4] Another class of cases held combinations of manufacturers or dealers to control prices by securing a monopoly illegal.[5] But the facts of the cases in the second class showed a very apparent attempt on the part of the defendants to suppress competition by outsiders to the agreement, and hence they furnish no basis for the supposed "rule." No more do those cases which deal with combinations the primary purpose and effect of which was to restrain the commerce of the public.[6] Indeed the only cases which are seriously regarded as giving color to the statement that all restriction of competition was illegal are the railroad cases. But railroads are public service companies, which, on account of their natural monopoly and their public nature, are governed by rules inapplicable to ordinary men. Even at common law, they were subject to a visitatorial power of regulation in the state enforceable through the courts of chancery.[7] And language, distinguishing public service companies from ordinary corporations, is not lacking in cases in the Supreme Court.[8] Combinations of railroads to fix prices were considered so dangerous as to be *per se* unlawful, and the decision in these cases was simply that the fact that the rates fixed were reasonable would not render them lawful.[9]

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[2] See United States *v.* Trans-Missouri Freight Association, 166 U. S. 290, 327; United States *v.* Joint Traffic Association, 171 U. S. 505, 577; Northern Securities Co. *v.* United States, 193 U. S. 197, 328, 331.

[3] See, for example, an article by Victor Morawetz in 22 HARV. L. REV. 492.

[4] United States *v.* Trans-Missouri Freight Association, *supra*; United States *v.* Joint Traffic Association, *supra*; Northern Securities Co. *v.* United States, *supra*.

[5] Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211; Montague & Co. *v.* Lowry, 193 U. S. 38; Swift & Co. *v.* United States, 196 U. S. 375; Continental Wall Paper Co. *v.* Voight, 212 U. S. 227.

[6] Such a case is Loewe *v.* Lawlor, 208 U. S. 274.

[7] Attorney-General *v.* Railway Companies, 35 Wis. 425.

[8] See Gibbs *v.* Consolidated Gas Co. of Baltimore, 130 U. S. 396, 408.

[9] See United States *v.* Trans-Missouri Freight Association, 166 U. S. 290 331; United States *v.* Joint Traffic Association, 171 U. S. 505, 576. It may well be doubted

Indeed, far from being justified by the cases, the supposed rule that any restriction of competition is illegal was inconsistent with at least one case which held a contract by a seller of a business not to compete with the buyer legal as simply incidental to the sale of the good-will.[10] It is also inconsistent with the language of Peckham, J., himself in these same railroad cases in which he insists that the Act must be given a reasonable construction and not held to make illegal ordinary business transactions.[11] The supposed rule was at best embodied in a *dictum*, never lived up to by the court, and deprived of all force even as a *dictum* when, by its repudiation by Brewer, J., in his concurring opinion in the Northern Securities case, it became the *dictum* of only a minority of the court.[12]

Thus the court before the principal cases were decided recognized that the general wording of the Act necessitated the judicial framing of some standard of illegality. The principal cases recognize the only standard fairly to be inferred from the words of the Act, namely, the standard imposed by the common law at the time of its adoption.[13] This demands that a restraint be reasonable in its relation to the necessities of the parties to some lawful transaction, and in its relation to the public.[14] It is certainly unreasonable in its relation to the public when it interferes with the right of strangers to the combination to compete.[15] Thus this construction strikes at the evils of combination without infringing on the constitutional guaranty of freedom of contract. How far a combination not involving the universally recognized classes of public service companies may be unreasonable merely on account of its size must be regarded as still unsettled by direct decision. On principle it would seem that this must depend largely on the nature of the business in each particular case. Where the business is such that competition is still possible, it would seem that the right of outsiders to compete is not interfered with unless resort is had to unfair methods to suppress competitors who will not join the combination; for only by such methods may an effective monopoly be maintained. But in many businesses, because of the cost of plant necessary to conduct them, or other considerations, a combination of great size may come to be a virtual monopoly,[16] even though it has attained its position simply by a process of legitimate business development. As such a combination would be as effective an obstacle to free competition as if it had used unfair methods to throttle competition, it may well be questioned whether its mere size would not render it illegal.

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whether the use of the word "reasonable" in these cases had any reference to the nature of the combination, apart from the reasonableness of the rates that it fixed.

[10] Cincinnati, etc. Packet Co. *v.* Bay, 200 U. S. 179. It was said here that this restraint was not "direct." Exactly what was meant by "direct" seems uncertain.

[11] See United States *v.* Joint Traffic Association, 171 U. S. 505, 566, 567.

[12] See Northern Securities Co. *v.* United States, 193 U. S. 197, 361. Even if the present construction of the Act be regarded as merely *dictum*, because the defendants in the principal cases were subject to dissolution under any construction, it is a *dictum* subscribed to by eight out of nine of the judges.

[13] See Standard Oil Co. *v.* United States, 221 U. S. 1, 60.

[14] United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271, aff. 175 U. S. 211.

[15] Addyston Pipe & Steel Co. *v.* United States, *supra*; Montague & Co. *v.* Lowry, *supra*; Swift & Co. *v.* United States, *supra*.

[16] See 1 WYMAN, PUBLIC SERVICE CORPORATIONS, §§ 120 *et seq.*